

# In the Court of Appeals of the State of Alaska

**Olie Olrún III,**

Appellant,

v.

**State of Alaska,**

Appellee.

Court of Appeals No. **A-13056**

## **Order**

Date of Order: **April 21, 2020**

Trial Court Case No. **4BE-15-00350CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Olie Olrún III was convicted, following a jury trial, of first-degree sexual abuse of a minor<sup>1</sup> for performing cunnilingus on his seven-year-old niece, C.J.

The evidence used to convict Olrún included Olrún's confession to the police that he "lick[ed]" his niece's vagina. At trial, this confession was corroborated by C.J.'s testimony and by her earlier report, in a Child Advocacy Center interview, that Olrún once touched her "privates" with his tongue.

However, at the grand jury hearing, C.J. denied that Olrún had performed cunnilingus on her, and the prosecutor did not seek to introduce her prior statement from the Child Advocacy Center interview as a prior inconsistent statement. Thus, the only evidence of cunnilingus introduced at the grand jury hearing was Olrún's confession.

Prior to trial, Olrún's attorney moved to dismiss the indictment, arguing that the introduction of Olrún's confession without any corroborating evidence violated the

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<sup>1</sup> AS 11.41.434(a)(1).

doctrine of *corpus delicti* under Alaska law.<sup>2</sup> The State opposed, attaching the audio of the Child Advocacy Center as an exhibit. The superior court denied the motion to dismiss indictment, ruling that *corpus delicti* did not apply to grand jury proceedings.

On appeal, Olrun challenges the superior court’s decision to deny the motion to dismiss indictment. Both parties brief the question of whether *corpus delecti* applies to grand jury proceedings in Alaska. However, neither party discusses our decision in *Leggett v. State*.<sup>3</sup> In *Leggett*, we held that a trial judge may consider inadmissible evidence when determining whether a defendant’s confession is sufficiently corroborated to satisfy the *corpus delicti* rule.<sup>4</sup> We also noted that this holding was consistent with the holdings of other jurisdictions that follow the same “evidentiary foundation” approach to the *corpus delecti* rule as Alaska.<sup>5</sup>

Our holding in *Leggett* suggests that, even assuming the doctrine of *corpus delecti* applies to grand jury proceedings, the superior court could reasonably rely on the Child Advocacy Center video to satisfy the *corpus delecti* rule. However, neither party has had an opportunity to specifically brief this issue.

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<sup>2</sup> Alaska follows the “evidentiary foundation” view of *corpus delicti*. See *Langevin v. State*, 258 P.3d 866, 870 (Alaska App. 2011) (comparing the minority “evidentiary foundation” view of *corpus delecti* with the majority “implicit element” view). Under the “evidentiary foundation” approach, the judge (not the jury) assesses the sufficiency of the State’s evidence to prove the *corpus delecti*, and this decision is one of law — “similar to the judge’s assessment of the sufficiency of any other evidentiary foundation under Alaska Evidence Rule 104(a)-(b).” See *id.* at 869.

<sup>3</sup> *Leggett v. State*, 320 P.3d 311 (Alaska App. 2014).

<sup>4</sup> *Id.* at 312.

<sup>5</sup> *Id.* at 314-15, n.6.

Accordingly, IT IS ORDERED:

1. On or before May 21, 2020, Olrun shall file a supplemental brief addressing the holding in *Leggett v. State*, 320 P.3d 311 (Alaska App. 2014), and applying it to the circumstances presented by this case. This brief shall be no longer than 10 pages, and it need not conform to the requirements of Appellate Rule 212, with the exception of subsections (c)(1)(A), (I), and (J).

2. After Olrun files his supplemental brief, the State shall file a responsive brief within 30 days. Again, this brief shall be no longer than 10 pages, and it need not conform to the requirements of Appellate Rule 212, with the exception of subsections (c)(1)(A), (I), and (J).

3. After we receive the parties' supplemental briefs, we will resume our consideration of this case.

Entered at the direction of the Court.

Clerk of the Appellate Courts

/s/ R. Montgomery-Sythe

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Ryan Montgomery-Sythe,  
Chief Deputy Clerk

Distribution:

Email:  
Friedman, Elizabeth D., Public Defender  
Ringsmuth, Eric